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IN THE

Supreme Court of the United States

October Term, 1967

No. 639

MRS. MINNIE BRADE GLONA,
Petitioner,

versus

AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY, ET. AL.,

On Writ of Certiorari To
The United States Court of Appeals
For the Fifth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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During oral argument Mr. Justice Black requested counsel to furnish the Court with the law in the various fifty states on inheritable rights by and between natural father and illegitimate child.

As an appendix to this brief, counsel show by a table the treatment afforded illegitimate and natural fathers in the various jurisdictions. The analysis below and the table is made only with reference to intestate decedents. Only a few jurisdictions would prohibit donations by or between illegitimates in testate situations.

Since Louisiana has forced heirship (La. Civ. Code, Art. 1493, 1494), it would be one jurisdiction which would prohibit donations mortis causa to illegitimate children (although the reverse situation would not be true) if there were other legitimate children. See La. Civ. Code, Art. 1483, 1484, 1486.

In approaching this matter, it must be remembered that the general common law rule prohibited inheritance to illegitimate children from either of their natural parents. The converse was also true. Only by statute or the evolution of case law has the rule been changed. As pointed out on page 18 of original brief, all jurisdictions now allow illegitimates and mothers to inherit from each other. See *Note, Illegitimacy,* The Brooklyn L. Rev. 45, 82(1959).

As between father and illegitimate child, the following is determined:

A. Twelve states by statute or by case law or by remaining silent do not allow the father or illegitimate child to inherit from each other.

B. Two states eliminate all distinctions between illegitimate and legitimate children for all purposes and every child is deemed to be the legitimate child of its natural parents.

C. Eight states allow, by statute or case law, illegitimates and fathers to inherit from each other where the father has acknowledged the child. The acknowledgment requirement may be very formal (before wit-

nesses and/or Notary) or informal (such as a holding out of the father as his child).

D. Nineteen states require the acknowledgment by the father as well as a subsequent marriage between the natural parents in order for the father and child to inherit from each other. However, many of these states are silent as to the distribution of the estate if the father fails to do so. This category would then overlap with (A) above.

In most states such intermarriage alone after the birth of the illegitimate will operate so as to legitimate the child making him then on equal footing with legitimate heirs. See e.g. La. Civ. Code, Art. 198.

E. Nine states allow the illegitimate child to inherit from the father who has acknowledged him, but the father has not been given the right of inheritance from the child. The child's estate generally goes to the mother. If she predeceases the father the statutes are generally silent.

Beyond the inheritance laws in the fifty states there are other ways that a child may come into inheritance rights, for example: by adoption or formal legitimation. In reference to Louisiana, this State has a formal means of legitimation, La. Civ. Code, Art. 200, only where there are no other ascendants or descendants.

Legitimation also occurs by the subsequent marriage of the natural parents, La. Civ. Code, Art. 198; and all inheritance rights flow. La. Civ. Code Art. 199.

Louisiana terminology becomes somewhat esoteric at this point — but the State also provides for acknowledgment. This device serves only to convert a *bastard* into a *natural child.* Acknowledgment, however, cannot be made of a child conceived at a time when the natural parents could not, by law, have contracted a valid marriage and have not subsequent to the birth, in fact, contracted one. La. Civ. Code, Art. 204. The methods of acknowledgment are either by notarial act or by the declaration in birth or baptismal certificate.

Needless to say, every mother fulfills the latter requirement of Article 200 since it is she who gives birth and she who fills out the customary certificate.

Acknowledgment serves as a vehicle to obtain inheritance in the same way as does legitimation. A mother or father may inherit from their illegitimate child where they have acknowledged him. La. Civ. Code, Art. 922.

The acknowledged (i.e. natural) child may inherit from the mother only in absence of other descendants of the mother. La. Civ. Code, Art. 918.

The acknowledged child may inherit from the father only in the absence of other descendants, ascendants, collaterals and surviving wife. La. Civ. Code, Art. 919.

Bastards, i.e. unacknowledged illegitimates do not inherit from mother or father. La. Civ. Code Art. 920.

However, the above relates solely to the laws *vis a vis*

inheritance — not that of recovery for wrongful death. They need not be, and are not in Louisiana, dependent upon each other.

The oral argument in this case also unfortunately took the tack quite tangential to the primary issue of the discriminating effect of the operation of La. Civ. Code Art. 2315, the wrongful death statute as to illegitimate children and their parents *vis a vis* that statute. Contrary to the assertions in various of the arguments heard by the Court in these cases, this Court's recognition and disapprobation of the discriminatory effect affects the balance of Louisiana inheritance law — with all its (now changing) history and efficacy — not at all.

This is so because of the point, made repeatedly by defendants that the statute under consideration, Art. 2315, is *sui generis*. Brief on behalf of respondents p. 5, citing *Abraham v. Connecticut Fire Ins. Co.*, 177 So. 2d. 295, (La. App. 1965). Particularly is this so regarding the problem posed this Court. For Article 2315 sets up a law of devolution all its own — it denominates the categories of inheritors; it ranks them; it excludes various of them in favor of others. All of this without reference to nor consistency with all other Louisiana inheritance law. Accordingly, inheritance law is substantially irrelevant except for such other interesting analogies as it may offer. Indeed, as it becomes increasingly liberalized (as it is) towards illegitimates the anomaly arises whereby Art. 2315 occupies a reversed position of being more restrictive than the general inheritance law relating merely to property.

Of course, the Court cannot rectify the unplanned incongruence merely for congruity's sake but the constitutional issue comes particularly into use here. While the inheritance law is, arguably, directed to the establishment of familial relationships and rights, the wrongful death and tort statute unarguably is directed to the compensation by wrongdoers for their wrongful acts solely. This is its sole *raison d'être* and other permissible purposes are to be accomplished by other laws.

The states once did and could, even today presumably, constitutionally not give a right of action for tortious death. Perhaps it could be denied to parents. But once given to parents, the denial to leperous parents, to Communist parents, to alcoholic parents, is unconstitutionally discriminatory. So, we submit is the denial to parents of the illegitimate.

CONCLUSION

The functional tests of equal protection are therefore applicable in this case, and the decision of the Fifth Circuit Court of Appeals should be reversed and the case remanded.

Respectfully submitted:

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CERTIFICATE

A copy of the foregoing supplemental brief has been served on Mr. Frank Normann, Esq., Normann and Normann, attorney for respondents, 1605 Hibernia National Bank Bldg., New Orleans, Louisiana, 70112, by mailing same to him postage prepaid this ____ day of May, 1968.

_____

APPENDIX

RIGHTS OF INHERITANCE-INTESTATE SUCCESSIONS

Illegitimate Children to and from Natural Father

STATE	A	B	C	D	E	STATUTE OR CASES
ALABAMA	X[1]					Code Ala. Tit. 16, §6, 7, 8
ALASKA	X					Alaska Comp. Laws §60-5, 6
ARIZONA		X				A.R.S. §14-206
ARKANSAS	X					Ark. Stats. §61-103
CALIFORNIA			X			Deering's Calif. Prob. Code §255, 256
COLORADO				X		C.R.S. §152-2-8, 11
CONNECTICUT	X					Heath v. White, 5 Conn. 228 (1824) Dickenson's App. 42 Conn. 491 (1875)
DELAWARE	X					13 Del. Code §1301, 2, 3, 4.
FLORIDA					X	F.S.A. §731.29
GEORGIA	X					Ga. Code Ann. §113-904, 905

STATE	A	B	C	D	E.	STATUTE OR CASES
HAWAII	X					Rev. Laws Haw. §330.12
IDAHO					X	Idaho Code §§14-104, 105
ILLINOIS				X		Ill. S. H. A. ch. 3§ 12.
INDIANA			X[2]			Buras Ind. St. §6-207
IOWA			X			Ia. Code Ann §633.222
KANSAS			X[2]			Gen. Stat. 1949 §59-501
KENTUCKY				X		Ky. Rev. Stat §391.090
LOUISIANA				X[3]		La. Civ. Code Art. 918-923
MAINE				X		18 M.R.S.A. §1003
MARYLAND	X					Penman v. Ayers, 221 Md. 154, 156 A. 2d 638
MASSACHUSETTS				X[2]		Mass. Gen. L. C.190§ 5, 6
MICHIGAN				X		M.S.A. §27:3178 (151, 2, 3)
MINNESOTA					X	Minn. S.A. §525.172, 173.
MISSISSIPPI					X	Miss. Stat. §474
MISSOURI				X		V. Mo. Stat Ann §474.060,070
MONTANA			X[4]			R. Code Mont. 391-404, 405
NEBRASKA					X	Neb. R.S. §30-109, 110.
NEVADA			X			Nev. R.S. §134.170, 180
NEW HAMPSHIRE	X					N.H.R.S. §561:4
NEW JERSEY				X		N.J.S.A. 3A:4-7

STATE	A	B	C	D	E	STATUTE OR CASES
NEW MEXICO			X[5]			N.M.S. 29-1-18, 19, 20
NEW YORK	X					N.Y. Est. Powers & Trusts §4-1.
NORTH CAROLINA				X		Gen. Stat. N.C. 29-18, 19
NORTH DAKOTA				X		N.D.C.C. §56-01, -05, 06
OHIO				X		B. Ohio R.C. §2105.17, 18.
OKLAHOMA			X			84 OK. S. Ann. 215, 216
OREGON		X				Ore. R.S. §109.060, 070, §111.231
PENNSYLVANIA				X		20. P.S. 1.7
RHODE ISLAND				X		Gen. L.R.I. §33-1-8
						Scalzi v. Folsom 156 F. Supp. 838
						838 (1957)
SOUTH CAROLINA	X					G.L. So. Car. 19-53
SOUTH DAKOTA					X	S.D.C. 56.0105, 0106
TENNESSEE	X					T.C.A. 31-105, 106, 107, 203.-205.
TEXAS				X		Vernon A.T.S. Probate Code §42.
UTAH					X	U.C.A. 74-4-10, 11
VERMONT				X		14 V.S.A. 553-554.
VIRGINIA				X		Michie Code 1950, §64-5
WASHINGTON					X	R.C.W. 11.04.080, 090
WEST VIRGINIA				X		W.V.C. §4084, 4085
WISCONSIN					X[5]	W.S.A. 237.05, 06
WYOMING				X		W.S.A. §2-44.

CODE:

A. Case law or statute prohibits inheritance to and from father and illegitimate child or else that law is silent and presumably common law rule applies.

B. No distinction between illegitimate and legitimate child exists for any purpose.

C. Inheritance predicated upon acknowledgment of the child by the father. Acknowledgment may be formal or informal from state to state. Inheritance from and to each other.

D. Acknowledgment and subsequent marriage between natural parents required in order for father and child to inherit from each other (note: the failure of the father of this requirement in most states would place the parties in category A above.)

E. The child may inherit from the father who has acknowledged him but not converse. The child's estate generally goes to the mother. The statutes are generally silent where mother predeceases father so apparently the common law rule would obtain.

[1]See *Butler v. Elyton Land Co.*, 84 Ala. 384, 4 So. 675; *Mostilla v. Ash*, 234 Ala. 626, 176 So. 356 (1937); both held that statute created exception only as to mother and therefore inheritance from the father is not punishable. Expressio unius est exclusio alteruis.

[2]Indiana, Kansas and Massachusetts also allow inheritance to and from father where paternity is judicially established. See particular statutes supra.

[3]Louisiana fits somewhat in each category. A more complete analysis of this state has been set out in original brief and the text of this supplemental brief.

[4]The father may not inherit from the illegitimate child in Montana unless he marries the natural mother. His failure to marry her will have the estate of the child devolve upon the mother.

[5]Father inherits from illegitimate child in New Mexico and Wisconsin only where the mother has predeceased him. Inheritable blood also attaches in Wisconsin where paternity has been judicially determined.